

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

---

In Re:

**Elliott Tatum And Lashaunta Tatum**

Case No. 08-81032

Chapter 13

Social Security No. xxx-xx-8588 and xxx-xx-5282  
Address: 6140 St. Andrews Drive, Sanford, NC 27332-

---

Debtors

**MOTION TO MODIFY PLAN**

**NOW COME the Debtors**, by and through counsel undersigned, who move, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtors show unto this Court the following:

1. This case was filed on July 17, 2008, with the Chapter 13 plan being subsequently confirmed on October 28, 2008.
2. The Debtors propose to modify the Chapter 13 plan in this case in the following respects:

From: \$2,283.00 per month.

To: \$2,283.00 per month through June 2011, followed thereafter by \$1,922.00 per month, starting in August 2011.
3. In addition, the Debtors request a “waiver” to move their Chapter 13 plan payment delinquency to the end of the Chapter 13 plan for payment. As a condition of receiving these waivers the Debtors agree that, should any subsequent payments be more than thirty (30) days delinquent within the twelve (12) months following the entry of this Order, that the Debtors’ case may be dismissed without further hearing by the Court. The Debtors agree that any Order allowing such waivers shall not be *res judicata* as to timely Motions for Relief filed by secured creditors in this case.
4. The changed circumstances that justify the proposed modification are as follows:
  - a. The Female Debtor has lost her job and is not receiving unemployment.
  - b. The Debtors currently have no child care expenses.
5. An Amended Schedule I for the Debtors is attached hereto and is incorporated hereto by reference.

6. An Amended Schedule J for the Debtors is attached hereto and is incorporated by reference.
7. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as detailed on the attached Chapter 13 Worksheet:
  - a. Change in length of plan.
  - b. Filed claims different from schedules.
  - c. Loss of disposable income.
  - d. Change in monthly disbursement to Santander to \$89.00.
  - e. Change in monthly disbursement to National Auto Finance to \$260.00.

**Appended Application for an Additional Attorney Fee**

8. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.
9. Additionally, pursuant to Bankruptcy Rule 2016(a), attorney for the Debtors seeks reimbursement in the amount of \$63.00 for the costs of service of this Motion on creditors.

WHEREFORE, the Debtors pray that this Court grant their Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$313.00 to compensate undersigned for the services and costs rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: July 15, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward C. Boltz  
Edward C. Boltz  
North Carolina State Bar No.: 23003  
6616-203 Six Forks Road  
Raleigh, N.C. 27615  
(919) 847-9750

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

---

In Re:

**Elliott Tatum And Lashaunta Tatum**

Case No. 08-81032

Chapter 13

Social Security No. xxx-xx-8588 and xxx-xx-5282

Address: 6140 St. Andrews Drive, Sanford, NC 27332-

---

Debtors

**CERTIFICATE OF SERVICE**

I, Dawn DeFrane, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on July 15, 2011, I served copies of the foregoing **MOTION TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II  
Chapter 13 Trustee  
Michael West  
U.S. Bankruptcy Administrator

Elliott Tatum And Lashaunta Tatum  
6140 St. Andrews Drive,  
Sanford, NC 27332-

All creditors listed on the attached Mailing Matrix at the addresses listed thereon.

/s Dawn DeFrane  
Dawn DeFrane

In re **Elliott DeCarlos Tatum  
LaShaunta McLamb Tatum**Case No. **08-81032**

Debtor(s)

**SCHEMULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S) - AMENDED**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S):	AGE(S):
<b>Married</b>	<b>Daughter</b>	<b>4</b>
	<b>Son</b>	<b>6</b>
<b>Employment:</b>	<b>DEBTOR</b>	<b>SPOUSE</b>
Occupation	<b>QA Specialist</b>	<b>Unemployed</b>
Name of Employer	<b>Novartis</b>	
How long employed	<b>19 months</b>	
Address of Employer	<b>475 Green Oaks Parkway Holly Springs, NC 27540</b>	

INCOME: (Estimate of average or projected monthly income at time case filed)

1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly)  
2. Estimate monthly overtime

DEBTOR	SPOUSE
\$ <u>5,399.50</u>	\$ <u>0.00</u>
\$ <u>0.00</u>	\$ <u>0.00</u>

3. SUBTOTAL

\$ <u>5,399.50</u>	\$ <u>0.00</u>
--------------------	----------------

## 4. LESS PAYROLL DEDUCTIONS

a. Payroll taxes and social security  
b. Insurance  
c. Union dues  
d. Other (Specify): 401(k) Deduction

\$ <u>1,061.78</u>	\$ <u>0.00</u>
\$ <u>703.15</u>	\$ <u>0.00</u>
\$ <u>0.00</u>	\$ <u>0.00</u>
\$ <u>250.36</u>	\$ <u>0.00</u>
\$ <u>0.00</u>	\$ <u>0.00</u>

## 5. SUBTOTAL OF PAYROLL DEDUCTIONS

\$ <u>2,015.29</u>	\$ <u>0.00</u>
--------------------	----------------

## 6. TOTAL NET MONTHLY TAKE HOME PAY

\$ <u>3,384.21</u>	\$ <u>0.00</u>
--------------------	----------------

7. Regular income from operation of business or profession or farm (Attach detailed statement)

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

8. Income from real property

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

9. Interest and dividends

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

11. Social security or government assistance

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

(Specify):

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

12. Pension or retirement income

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

13. Other monthly income

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

(Specify):

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

## 14. SUBTOTAL OF LINES 7 THROUGH 13

\$ <u>0.00</u>	\$ <u>0.00</u>
----------------	----------------

## 15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)

\$ <u>3,384.21</u>	\$ <u>0.00</u>
--------------------	----------------

## 16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)

\$ <u>3,384.21</u>	\$ <u>0.00</u>
--------------------	----------------

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:  
**None.**

## SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)			\$ <u>0.00</u>
a. Are real estate taxes included?	Yes <u>      </u>	No <u>X</u>	
b. Is property insurance included?	Yes <u>      </u>	No <u>X</u>	
2. Utilities:			
a. Electricity and heating fuel			\$ <u>160.00</u>
b. Water and sewer			\$ <u>70.00</u>
c. Telephone			\$ <u>27.00</u>
d. Other <u>See Detailed Expense Attachment</u>			\$ <u>383.00</u>
3. Home maintenance (repairs and upkeep)			\$ <u>0.00</u>
4. Food			\$ <u>447.00</u>
5. Clothing			\$ <u>0.00</u>
6. Laundry and dry cleaning			\$ <u>0.00</u>
7. Medical and dental expenses			\$ <u>0.00</u>
8. Transportation (not including car payments)			\$ <u>240.00</u>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.			\$ <u>0.00</u>
10. Charitable contributions			\$ <u>0.00</u>
11. Insurance (not deducted from wages or included in home mortgage payments)			
a. Homeowner's or renter's			\$ <u>0.00</u>
b. Life			\$ <u>0.00</u>
c. Health			\$ <u>0.00</u>
d. Auto			\$ <u>85.21</u>
e. Other			\$ <u>0.00</u>
12. Taxes (not deducted from wages or included in home mortgage payments)			
(Specify) <u>Personal Property Taxes</u>			\$ <u>50.00</u>
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)			
a. Auto			\$ <u>0.00</u>
b. Other			\$ <u>0.00</u>
c. Other			\$ <u>0.00</u>
14. Alimony, maintenance, and support paid to others			\$ <u>0.00</u>
15. Payments for support of additional dependents not living at your home			\$ <u>0.00</u>
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)			\$ <u>0.00</u>
17. Other <u>Chapter 13 Plan Payment</u>			\$ <u>1,922.00</u>
Other			\$ <u>0.00</u>
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)			\$ <u>3,384.21</u>
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:			
<u>None.</u>			
20. STATEMENT OF MONTHLY NET INCOME			
a. Average monthly income from Line 15 of Schedule I			\$ <u>3,384.21</u>
b. Average monthly expenses from Line 18 above			\$ <u>3,384.21</u>
c. Monthly net income (a. minus b.)			\$ <u>0.00</u>

**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED**  
**Detailed Expense Attachment****Other Utility Expenditures:**

Cablevision	\$ 134.00
Cellular Phone	\$ 189.00
Homeowner's Dues	\$ 60.00
<b>Total Other Utility Expenditures</b>	<b>\$ 383.00</b>

**CH. 13 PLAN - DEBTS SHEET**  
(MIDDLE DISTRICT - STEP PLAN)

RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN

Retain	Creditor Name	Sch D #	Description of Collateral

ARREARAGE CLAIMS ON RETAINED COLLATERAL

Retain	Creditor Name	Sch D #	Arrearage Amount
	Wells Fargo Bank		\$6,160

LID - DOT on PRINCIPAL RESIDENCE / OTHER REAL PROPERTY

Retain	Creditor Name	Sch D #	Mortgage Payment	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	Wells Fargo Bank		\$1,285	n/a	n/a	\$1,285	House & Land
				n/a	n/a		
				n/a	n/a		

STD - SECURED DEBTS (Retain Collateral & Pay FMV Of Collateral)

Retain	Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	U.S Dept. of HUD			7.00			House & Land
				7.00			
				7.00			
				7.00			

STD - SECURED DEBTS & 910 CLAIMS (Pay 100%)

Retain	Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	Santander Consumer		\$2,892	5.25	\$29	\$89	02 Nissan
	National Auto Finance		\$8,410	5.25	\$84	\$260	06 Nissan
				7.00			
				7.00			
				7.00			

ATTORNEY FEES (Unpaid Part)

Amount  
Law Offices of John T. Orcutt, P.C. \$600

SECURED TAXES

Secured Amount  
IRS Tax Liens

Real Property Taxes on Retained Realty

UNSECURED PRIORITY DEBTS

Amount  
IRS Taxes

State Taxes

Personal Property Taxes

Alimony or Child Support Arrearage

COSIGN PROTECT (Pay 100%)

Int. % Payoff Amount

All 'Co-Sign Protect Debts (See\*\*\*)

GENERAL NON-PRIORITY UNSECURED

Amount to Pay \*

DMI = None(\$0)

PROPOSED CHAPTER 13 PLAN

\$ 1922 /month for 29 months, then

\$ N/A /month for N/A months.\*\*

Definitions

Sch D # = The number of the secured debt as listed on Schedule D.

Adequate Protection = Required monthly 'Adequate Protection' payment.

\* = Minimum of DMI x ACP, minus all co-sign protect debt.

\*\* = Plan duration is subject to "Duration of Chapter 13 Plan" provision.

\*\*\* Co-sign protect on all debts so designated on filed schedules D, E and F

Final MD\_Step (rev. 11/6/07) © Copyright by John T. Orcutt (Page 4 of 4)

Other Miscellaneous Provisions